

EN BANC

[G.R. No. 184621, December 10, 2013]

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. MARIA FE ESPINOSA CANTOR, RESPONDENT.

DECISION

BRION, J.:

The petition for review on *certiorari*^[1] before us assails the decision^[2] dated August 27, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 01558-MIN which affirmed the order^[3] dated December 15, 2006 of the Regional Trial Court (RTC), Branch 25, Koronadal City, South Cotabato, in SP Proc. Case No. 313-25, declaring Jerry F. Cantor, respondent Maria Fe Espinosa Cantor's husband, presumptively dead under Article 41 of the Family Code.

The Factual Antecedents

The respondent and Jerry were married on September 20, 1997. They lived together as husband and wife in their conjugal dwelling in Agan Homes, Koronadal City, South Cotabato. Sometime in January 1998, the couple had a violent quarrel brought about by: (1) the respondent's inability to reach "sexual climax" whenever she and Jerry would have intimate moments; and (2) Jerry's expression of animosity toward the respondent's father.

After their quarrel, Jerry left their conjugal dwelling and this was the last time that the respondent ever saw him. Since then, she had not seen, communicated nor heard anything from Jerry or about his whereabouts.

On May 21, 2002, or more than four (4) years from the time of Jerry's disappearance, the respondent filed before the RTC a petition^[4] for her husband's declaration of presumptive death, docketed as SP Proc. Case No. 313-25. She claimed that she had a well-founded belief that Jerry was already dead. She alleged that she had inquired from her mother-in-law, her brothers-in-law, her sisters-in-law, as well as her neighbors and friends, but to no avail. In the hopes of finding Jerry, she also allegedly made it a point to check the patients' directory whenever she went to a hospital. All these earnest efforts, the respondent claimed, proved futile, prompting her to file the petition in court.

The Ruling of the RTC

After due proceedings, the RTC issued an order granting the respondent's petition and declaring Jerry presumptively dead. It concluded that the respondent had a well-founded belief that her husband was already dead since more than four (4) years had passed without the former receiving any news about the latter or his whereabouts. The dispositive portion of the order dated December 15, 2006 reads:

WHEREFORE, the Court hereby declares, as it hereby declared that respondent Jerry F. Cantor is presumptively dead pursuant to Article 41 of the Family Code of the Philippines without prejudice to the effect of the reappearance of the absent spouse Jerry F. Cantor.^[5]

The Ruling of the CA

The case reached the CA through a petition for *certiorari*^[6] filed by the petitioner, Republic of the Philippines, through the Office of the Solicitor General (OSG). In its August 27, 2008 decision, the CA dismissed the petitioner's petition, finding no grave abuse of discretion on the RTC's part, and, accordingly, fully affirmed the latter's order, thus:

WHEREFORE, premises foregoing (sic), the instant petition is hereby DISMISSED and the assailed Order dated December 15, 2006 declaring Jerry F. Cantor presumptively dead is hereby AFFIRMED *in toto*.^[7]

The petitioner brought the matter via a Rule 45 petition before this Court.

The Petition

The petitioner contends that *certiorari* lies to challenge the decisions, judgments or final orders of trial courts in petitions for declaration of presumptive death of an absent spouse under Rule 41 of the Family Code. It maintains that although judgments of trial courts in summary judicial proceedings, including presumptive death cases, are deemed immediately final and executory (hence, not appealable under Article 247 of the Family Code), this rule does not mean that they are not subject to review on *certiorari*.

The petitioner also posits that the respondent did not have a well-founded belief to justify the declaration of her husband's presumptive death. It claims that the respondent failed to conduct the requisite diligent search for her missing husband. Likewise, the petitioner invites this Court's attention to the attendant circumstances surrounding the case, particularly, the degree of search conducted and the respondent's resultant failure to meet the strict standard under Article 41 of the Family Code.

The Issues

The petition poses to us the following issues:

- (1) Whether *certiorari* lies to challenge the decisions, judgments or final orders of trial courts in petitions for declaration of presumptive death of an absent spouse under Article 41 of the Family Code; and
- (2) Whether the respondent had a well-founded belief that Jerry is already dead.

The Court's Ruling

We grant the petition.

a. On the Issue of the Propriety of Certiorari as a Remedy

Court's Judgment in the Judicial Proceedings for Declaration of Presumptive Death Is Final and Executory, Hence, Unappealable

The Family Code was explicit that the court's judgment in summary proceedings, such as the declaration of presumptive death of an absent spouse under Article 41 of the Family Code, shall be immediately final and executory.

Article 41, in relation to Article 247, of the Family Code provides:

Art. 41. A marriage contracted by any person during subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present has a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.

Art. 247. The judgment of the court shall be immediately final and executory. [underscores ours]

With the judgment being final, it necessarily follows that it is no longer subject to an appeal, the dispositions and conclusions therein having become immutable and unalterable not only as against the parties but even as against the courts.^[8] Modification of the court's ruling, no matter how erroneous is no longer permissible. The final and executory nature of this summary proceeding thus prohibits the resort to appeal. As explained in *Republic of the Phils. v. Bermudez-Lorino*,^[9] the right to appeal is not granted to parties because of the express mandate of Article 247 of the Family Code, to wit:

In Summary Judicial Proceedings under the Family Code, there is no reglementary period within which to perfect an appeal, precisely because judgments rendered thereunder, by express provision of [Article] 247, Family Code, supra, are "immediately final and executory." It was erroneous, therefore, on the part of the RTC to give due course to the Republic's appeal and order the transmittal of the entire records of the case to the Court of Appeals.

An appellate court acquires no jurisdiction to review a judgment which, by express provision of law, is immediately final and executory. As we have said in *Veloria vs. Comelec*, "the right to appeal is not a natural right nor is it a part of due process, for it is merely a statutory privilege." **Since, by express mandate of Article 247 of the Family Code, all judgments rendered in summary judicial proceedings in Family Law are "immediately final and executory,"**

the right to appeal was not granted to any of the parties therein.

The Republic of the Philippines, as oppositor in the petition for declaration of presumptive death, should not be treated differently. It had no right to appeal the RTC decision of November 7, 2001. [emphases ours; italics supplied]

Certiorari Lies to Challenge the Decisions, Judgments or Final Orders of Trial Courts in a Summary Proceeding for the Declaration of Presumptive Death Under the Family Code

A losing party in this proceeding, however, is not entirely left without a remedy. While jurisprudence tells us that no appeal can be made from the trial court's judgment, an aggrieved party may, nevertheless, file a petition for *certiorari* under Rule 65 of the Rules of Court to question any abuse of discretion amounting to lack or excess of jurisdiction that transpired.

As held in *De los Santos v. Rodriguez, et al.*,^[10] the fact that a decision has become final does not automatically negate the original action of the CA to issue *certiorari*, prohibition and mandamus in connection with orders or processes issued by the trial court. *Certiorari* may be availed of where a court has acted without or in excess of jurisdiction or with grave abuse of discretion, and where the ordinary remedy of appeal is not available. Such a procedure finds support in the case of *Republic v. Tango*,^[11] wherein we held that:

This case presents an opportunity for us to settle the rule on appeal of judgments rendered in summary proceedings under the Family Code and accordingly, refine our previous decisions thereon.

Article 238 of the Family Code, under Title XI: SUMMARY JUDICIAL PROCEEDINGS IN THE FAMILY LAW, establishes the rules that govern summary court proceedings in the Family Code:

"ART. 238. Until modified by the Supreme Court, the procedural rules in this Title shall apply in all cases provided for in this Code requiring summary court proceedings. Such cases shall be decided in an expeditious manner without regard to technical rules."

In turn, Article 253 of the Family Code specifies the cases covered by the rules in chapters two and three of the same title. It states:

"ART. 253. The foregoing rules in Chapters **2** and 3 hereof shall likewise govern **summary proceedings** filed under Articles **41**, 51, 69, 73, 96, 124 and 217, insofar as they are applicable." (Emphasis supplied.)

In plain text, Article 247 in Chapter 2 of the same title reads:

"ART. 247. The judgment of the court shall be immediately final and executory."

By express provision of law, the judgment of the court in a summary proceeding shall be immediately final and executory. As a matter of course, it follows that no appeal can be had of the trial court's judgment

in a summary proceeding for the declaration of presumptive death of an absent spouse under Article 41 of the Family Code. **It goes without saying, however, that an aggrieved party may file a petition for certiorari to question abuse of discretion amounting to lack of jurisdiction. Such petition should be filed in the Court of Appeals in accordance with the Doctrine of Hierarchy of Courts.** To be sure, even if the Court's original jurisdiction to issue a writ of certiorari is concurrent with the RTCs and the Court of Appeals in certain cases, such concurrence does not sanction an unrestricted freedom of choice of court forum. [emphasis ours]

Viewed in this light, we find that the petitioner's resort to *certiorari* under Rule 65 of the Rules of Court to question the RTC's order declaring Jerry presumptively dead was proper.

b. On the Issue of the Existence of Well-Founded Belief

The Essential Requisites for the Declaration of Presumptive Death Under Article 41 of the Family Code

Before a judicial declaration of presumptive death can be obtained, it must be shown that the prior spouse had been absent for four consecutive years and the present spouse had a well-founded belief that the prior spouse was already dead. Under Article 41 of the Family Code, there are four (4) essential requisites for the declaration of presumptive death:

1. That the absent spouse has been missing for four consecutive years, or two consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391, Civil Code;
2. That the present spouse wishes to remarry;
3. **That the present spouse has a well-founded belief that the absentee is dead;** and
4. That the present spouse files a summary proceeding for the declaration of presumptive death of the absentee.^[12]

The Present Spouse Has the Burden of Proof to Show that All the Requisites Under Article 41 of the Family Code Are Present

The burden of proof rests on the present spouse to show that all the requisites under Article 41 of the Family Code are present. Since it is the present spouse who, for purposes of declaration of presumptive death, substantially asserts the affirmative of the issue, it stands to reason that the burden of proof lies with him/her. He who alleges a fact has the burden of proving it and mere allegation is not evidence.^[13]

Declaration of Presumptive Death Under Article 41 of the Family Code Imposes a Stricter Standard